

Re B (Children Act Proceedings) (Issue Estoppel)

[1997] 1 FLR 285

01/11/1996

Barristers

Private: Elizabeth Coleman

Court

Family Division

Facts

Care proceedings were taken in respect of two boys. The local authority sought to rely upon a finding of fact made in earlier proceedings concerning two other children, but in which the same man was involved, that the man had sexually abused those other children. The present proceedings were transferred to the High Court on a preliminary issue, namely whether the man was bound by the finding of fact made in the previous proceedings. The scope and application of the doctrine of issue estoppel and the power of the court to control the evidence to be called in proceedings concerning children fell to be considered.

Held

Held -

- (1) There is no strict rule of issue estoppel binding any of the parties in cases concerning children.
- (2) Children proceedings are inquisitorial in nature and the court has a discretion as to how it conducts its inquiry.
- (3) Where findings of fact are challenged in subsequent proceedings, the court would wish to be informed not only of the findings, but also of the evidence upon which the findings were based. It would then be for the court to decide whether or not to allow any issue of fact to be tried afresh.
- (4) The following factors, amongst others, were to be considered: there was a public interest in bringing litigation to an end; a matter should not be tried twice unless there was a good reason for doing so; and any delay in determining the outcome of a case was likely to be prejudicial to the welfare of the child concerned. On the other hand, the welfare of the child was not likely to be served by relying upon findings which turned out to be erroneous and the court's discretion had to be applied so that there was justice, not injustice.
- (5) Moreover, the importance of the previous findings had to be considered in the context of the current proceedings: if they were so important that they were bound to affect the outcome, the court might be

more willing to consider a rehearing than if the findings were of a lesser or peripheral significance.

(6) Above all, the court would consider whether there was any reason to think that a rehearing of the issue would result in any different finding and so the court would want to know whether the previous findings were made after a full hearing (in which the evidence was tested) and if so, whether there was any ground upon which the accuracy of the finding could be attacked at the time and, if so, why there was no appeal. The court would also want to know whether there was any new evidence or information casting doubt upon the findings.

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